

MAINE PUBLIC UTILITIES COMMISSION
Investigations into Implementation of the
Federal Communication Commission's
Triennial Review Order

September 26, 2003

PROCEDURAL ORDER

I. 90-Day Proceeding

As stated in the Notice opening this proceeding, on August 21, 2003, the Federal Communications Commission (FCC) issued its *Triennial Review Order* (TRO)¹ relating to the implementation of the Telecommunications Act of 1996. One of the issues addressed in the TRO was whether incumbent local exchange carriers (ILECs) needed to continue to provide unbundled switching to competitive local exchange carriers (CLECs) who use the switching unbundled network element (UNE) to provide service to enterprise market customers.² The FCC instituted a national presumption that ILECs do not need to provide unbundled switching to CLECs serving enterprise market customers using DS-1 and higher speed loops. The FCC then established a mechanism by which a state commission can petition the FCC for a waiver of this presumption if the state commission finds that circumstances in specific markets warrant continued provision of the enterprise market switching UNE to CLECs serving DS1 and DSO customers.³ In order to obtain a waiver from the FCC, the state must conduct a detailed analysis of operational and economic issues and file the waiver petition within 90 days of the effective date of the *Triennial Review Order* (January 1, 2004). This process is known as conducting a 90-day proceeding.

At this time, the MPUC does not plan to conduct a 90-day proceeding to seek a waiver of the national presumption. We would consider conducting such a proceeding if affected CLECs make a *prima facie* showing that they can rebut the FCC's national presumption. In order to ensure that we have sufficient time to conduct a 90-day proceeding, we set a deadline of **October 8, 2003**, for CLECs to make filings requesting such a proceeding. The filing must summarize how the CLEC would rebut the FCC's national finding of non-impairment and include a detailed offer of proof describing the evidence the party would present in the case. The filing should address the specific factors outlined by the FCC at

¹ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 01-338 (rel. August 21, 2003) (*Triennial Review Order* or *TRO*).

² Enterprise customers are defined as those who depend upon their telecommunications network to do business, who are sensitive to reliability and service quality issues, and who may demand sensitive, sophisticated packages of services. See TRO at ¶¶128,129.

³ TRO at ¶ 455.

¶¶ 456-458 of the TRO. Finally, the filing should indicate the total number of customers the CLEC currently serves in Maine as well as the number of customers served in Maine with DS0 and DS1 loops.

We will quickly review any filings submitted and the Commission will reach a determination regarding whether to continue with a detailed investigation. Parties will be notified *via* e-mail if a case teleconference is necessary. If no filings are submitted, the Advisory Staff will recommend that the Commission make a formal finding reflecting the lack of interest in conducting the 90-day proceeding and proceed no further on these issues.

II. Nine-Month Proceeding

The *Triennial Review Order* also made findings and national presumptions relating to other UNEs. Generally speaking, the FCC gave state commissions nine months to conduct proceedings associated with the other UNEs. We expect to issue a procedural order in the near future which will address how we expect to handle these issues. If necessary, we will bifurcate this proceeding so that both the 90-day and nine-month proceeding can proceed simultaneously.

BY ORDER OF THE HEARING EXAMINER

Trina M. Bragdon
Hearing Examiner